

08-31-05

DAC
IPW



Practitioner's Docket No. U 013457-4

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: Werner KERZENDORF, et al.

Application No.: 09/907,513

Group No.: 2121

Filed: July 17, 2001

Examiner: Ronald D. Hartman Jr.

For: SENSOR SYSTEM AND METHOD FOR DETERMINING SYSTEM STATES

Mail Stop Petition

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY
UNDER 37 C.F.R. § 1.137(b)

NOTE: "In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents." 37 C.F.R. § 1.137(c).

NOTE: In accordance with the Notice of November 5, 1990 (1121 O.G. 6), an application abandoned under 37 C.F.R. § 1.53(d) for failure to timely provide the appropriate filing fee, oath or declaration and/or surcharge may be revived under the procedure of 37 C.F.R. § 1.137(b).

CERTIFICATION UNDER 37 C.F.R. 1.10*

(Express Mail label number is **mandatory**.)

(Express Mail certification is optional.)

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date August 30, 2005, in an envelope as "Express Mail Post Office to Addressee", mailing Label Number EV 480461115 US, addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

(type or print name of person mailing paper)

CONNIE YANNOTTI

Signature of person mailing paper

WARNING: Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

***WARNING:** Each paper or fee filed by "Express Mail" **must** have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

09/01/2005 TBESHAH1 00000024 09907513 1500.00 DP
01 FC:1453

1. This application became abandoned on September 3, 2004

NOTE: Extensions under 37 C.F.R. § 1.136 are available only if asked for "prior to or with the response." Accordingly, if the question of abandonment arises when the provisions of § 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. Thus: "An application which is abandoned for failure to respond within a set period with no extension fee having been paid, would not require the payment of extension fees as a condition for revival." M.P.E.P. § 711.03(c), 6th ed., rev. 2.

2. This application became abandoned because the failure to prosecute was an unintentional delay. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

3. Response or action required

☐ has been filed.

☒ is attached.

NOTE: If the Response is the Issue Fee, the Issue Fee must be paid. See 11-5.

NOTE: The PTO accepts the filing of a continuing application as a response under 37 C.F.R. § 1.137. To facilitate processing in such a case, the petition to revive should specifically refer to the filing of a continuing application and also include an express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application. Notice of May 13, 1983, (1031 O.G. 11-12). See also M.P.E.P. § 711.03(c), 6th ed., rev. 2. "In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof." 37 C.F.R. § 1.137(b)(1).

(complete the following, if applicable)

☐ The response is the filing of a continuation application having an express abandonment conditioned on the granting of a filing date to the continuing application copending with this application.

4. Showing Required When Petition Being Filed Is More Than 3 Months From Notification of Abandonment or More Than 1 Year After Abandonment

NOTE: The applicant must carry the burden of proof to establish that the "entire" delay, from the due date for the fee and the filing of a grantable petition, was unintentional regardless of the circumstances that originally resulted in the abandonment of the application. M.P.E.P. Section 711.03(c), 8th Edition.

(complete the following, if applicable)

☒ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. Section 1.137(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997). See M.P.E.P., Section 711.03(c), 8th Edition, 700-185.

☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997). See M.P.E.P., Section 711.03(c), 8th Edition, 700-185.

5. Fee (37 C.F.R. 1.17(m))

Application status is:

- ☐ Small entity-fee \$750.00
☐ A statement is attached.
☐ A statement was filed.
☒ Other than small entity-fee \$1,500.00

6. Payment of fee

- ☒ Enclosed please find check for ☐ \$750.00. ☒ \$1,500.00.
☒ Charge Account 12-0425 for any additional fee required.
☐ Charge Account _____ the sum of ☐ \$750.00. ☐ \$1,500.00.
A duplicate of this petition is attached.

☒ Credit any overpayment to deposit account 12-0425.

Date: August 30, 2005

Signature of person making statement that
abandonment was due to an unintentional delay

(type or print name of person making statement)

Residence of person making statement

SIGNATURE OF PRACTITIONER

JULIAN H. COHEN
(type or print name of practitioner)

P.O. Address

c/o Ladas & Parry LLP
26 West 61st Street
New York, N.Y. 10023

Reg. No. 20,302

Tel. No.: (212) 708-1887

Customer No.:



00140

PATENT TRADEMARK OFFICE



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Werner KERZENDORF, et al.

Serial No.: 09/907,513

Group No.: 2121

Filed: July 17, 2001

Examiner: Ronald D. Hartman Jr.

For: SENSOR SYSTEM AND METHOD FOR DETERMINING SYSTEM STATES

Attorney Docket No.: U 013457-4

Director of the U.S. Patent and Trademark Office

P. O. Box 1450

Alexandria, VA 22313-1450

**SHOWING OF UNINTENTIONAL DELAY
FROM DATE OF NOTICE OF ABANDONMENT**

Because this petition is filed more than three months after the date of the Notice of Abandonment of March 15, 2005, Applicants additionally submit a showing in accordance with 37 CFR 1.137(b) and MPEP 711.03(c).

CERTIFICATION UNDER 37 C.F.R. 1.10*

*(Express Mail label number is **mandatory**.)*

(Express Mail certification is optional.)

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date August 30, 2005, in an envelope as "Express Mail Post Office to Addressee", mailing Label Number EV 480461115 US, addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

CONNIE YANNOTTI

(type or print name of person mailing paper)

Signature of person mailing paper

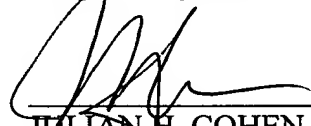
REMARKS:

After receiving the Notice of Abandonment of March 15, 2005, we prepared and filed on June 2, 2005 (within a three month period) a Petition to Exercise Supervisory Authority and Withdraw the Holding of Abandonment Under 37 CFR 1.181. The petition was filed because we strongly believe that the Final Rejection was improper and should be withdrawn and that this application should not have become abandoned. Despite several telephone calls from the undersigned attorney to the Examiner, the supervising Examiner, and the Director of Group 2100, we are still waiting for a decision on that Petition.

Although we still await a decision on the aforesaid Petition, we hereby petition for revival of the application.

REG. NO. 20302
Telephone: 212-708-1887

Respectfully submitted,



JULIAN H. COHEN
C/O LADAS & PARRY
26 West 61st STREET
NEW YORK, NY 10023